



US Army Corps  
of Engineers  
Kansas City District

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**KANSAS CITY DISTRICT  
CORPS OF ENGINEERS  
and the  
Abilene Levee Unit**

**Public Law 84-99 of the Flood Control Act of 1944  
Levee Rehabilitation – NEPA Review, Environmental  
Assessment & Finding of No Significant Impact**

**Abilene Levee Unit  
FEDERAL**

**Mud Creek  
Dickinson County, Kansas**

**May 2008**



**DEPARTMENT OF THE ARMY**  
**KANSAS CITY DISTRICT, CORPS OF ENGINEERS**  
**700 FEDERAL BUILDING**  
**KANSAS CITY, MISSOURI 64106-2896**

## **Finding of No Significant Impact**

### **Abilene Levee Unit, Dickinson County, Kansas**

#### **Project Summary**

The U.S. Army Corps of Engineers, Kansas City District (CENWK), in cooperation with the project sponsor, City of Abilene, Dickinson County, Kansas, propose to remove rip-rap that was washed into the creek channel, regrade the damaged bank, and place 18 inches of new rip-rap on the site. The project is to regrade, shape, and restore rip-rap along both banks of Mud Creek, under the authority of Public Law 84-99 of the Flood Control Act of 1944. Due to the limited nature of the damage only two alternatives were considered: (1) Rehabilitate the Abilene Levee Unit Dickinson County, Kansas and (2) No action. The Corps has identified Alternative 1 – Rehabilitate the Abilene Levee Unit Dickinson County, Kansas as the recommended plan. The proposed project will involve the removal of all existing rip-rap on the exposed areas, regrading and shaping the original bank slopes, and placing 18 inches of new rip-rap on the slope. This will prevent further erosion and will provide stability of the channel bank. The damage to the bank was caused by the declared flood event of 6 May 2007. The proposed repairs are located in the city limits of Abilene, Kansas along Mud Creek, north of 3<sup>rd</sup> Street.

#### **Alternatives**

Two alternatives were considered: (1) Rehabilitate the Abilene Levee Unit Dickinson County, Kansas and (2) No action.

#### **Recommended Plan**

Alternative 1 – Rehabilitate the Abilene Levee Unit Dickinson County, Kansas is the recommended plan. The proposed project will involve the removal of rip-rap from the exposed areas of Mud Creek, regrading and shaping the original bank slopes, and placement of 18 inches of new rip-rap on the slope. This will prevent further erosion and will provide stability of the channel, thus decreasing sediment loads which are currently decreasing the channel's capacity.

#### **Summary of Environmental Impacts**

Alternative 1 - Rehabilitate the Abilene Levee Unit Dickinson County, Kansas consists of repairing rip-rap displacement and channel slope along 180 linear feet of Mud Creek. The impacts caused by heavy equipment operating on the site will be short-term and minor, and the

repair activities associated with Alternative 1, will result in no impacts to properties listed, proposed for listing, eligible for listing, or potentially eligible for listing in the National Register of Historic Places. Alternative 1 will also have no impacts to any Federally-listed threatened or endangered species or their habitat. The flood risk management level achieved will be the same as the pre-flood levels. These minor adverse effects will be greatly offset by restoring the pre-flood risk management levels, and its associated social and economic benefits. Alternative 1 meets the project purpose and need of restoring the erosion protection to the banks of Mud Creek and maintaining the channel capacity. Of the two (2) alternatives considered, Alternative 1 – Rehabilitate the Abilene Levee Unit Dickinson County, Kansas is recommended because it is the only alternative that fulfills the purpose and need of the project and is consistent with the protection of the human environment.

## **Mitigation Measures**

The recommended plan will result in minor impacts to water resources as defined in USACE Planning regulations and under Section 404 of the Clean Water Act. These impacts are associated with the placement of rip-rap below the ordinary high water mark of Mud Creek. This work is authorized by General Permit Number NWKGP-41. No mitigation measures are warranted or proposed for this project.

## **Public Availability**

Prior to a decision on whether to prepare an Environmental Impact Statement, the CENWK circulated a Notice of Availability (Notice) of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI), dated May 27, 2008, with a thirty-day comment period ending on June 27, 2008 to the public and resource agencies. The Notice was e-mailed to individuals/agencies/businesses listed on CENWK-Regulatory Branch's e-mail mailing list. The Notice informed these individuals that the EA and Draft FONSI were available on the CENWK webpage for review or that they could request a hard copy of the EA and Draft FONSI in order to provide comment.

No comments were received.

Levee rehabilitation projects completed by the Corps under authority of Public Law 84-99 generally do not require the preparation of an Environmental Impact Statement. These projects typically result in long-term social and economic benefits and the adverse environmental effects are typically minor/long-term and minor/short-term construction related. Minor long-term impacts associated with these projects are typically well outweighed by the overall long-term social and economic benefits of these projects. As described above, the recommended plan is consistent with this assessment of typical levee rehabilitation projects completed by the Corps under authority of Public Law 84-99 of the Flood Control Act of 1944.

## Conclusion

After evaluating the anticipated environmental, economic, and social effects of the proposed activity, it is my determination that repairing the rip-rap displacement and channel slope on Mud Creek does not constitute a major Federal action that will significantly affect the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

Date:

17 July 08



Roger A. Wilson, Jr.  
Colonel, Corps of Engineers  
District Commander



**DEPARTMENT OF THE ARMY**  
**KANSAS CITY DISTRICT, CORPS OF ENGINEERS**  
**700 FEDERAL BUILDING**  
**KANSAS CITY, MISSOURI 64106-2896**

**EXECUTIVE SUMMARY**

The U.S. Army Corps of Engineers, Kansas City District (CENWK), in cooperation with the project sponsor, City of Abilene, propose to repair the flood damage reduction project, under the authority of Public Law 84-99 of the Flood Control Act of 1944. The proposed project would involve the placement of 18 inches of new rip-rap along approximately 180 linear feet of Mud Creek. Repairs are required as a result of the flood event declared on 6 May 2007.

The Abilene Levee Unit is comprised of 15,597 linear feet of levees, 435 linear feet of spoil bank levees, 938 linear feet of flood wall, and 17,818 linear feet of channel excavation. These works are along both the Smoky Hill River and Mud Creek. The Abilene Levee Unit protects approximately 3,000 homes, the entire city's business district, and the associated infrastructure. The recommended alternative consists of removing displaced rip-rap from the channel, regrading the slopes of exposed areas to their original configuration, and the placement of 18 inches of new rip-rap on the regraded areas on the banks of Mud Creek.

Prior to a decision on whether to prepare an Environmental Impact Statement, the CENWK circulated a Notice of Availability (Notice) of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI), dated May 27, 2008, with a thirty-day comment period ending on June 27, 2008 to the public and resource agencies. The Notice was e-mailed to individuals/agencies/businesses listed on the CENWK-Regulatory Branch's e-mail mailing list. The Notice informed these individuals that the EA and Draft FONSI were available on the CENWK webpage for review or that they could request the EA and Draft FONSI in writing, in order to provide comment.

Additional information concerning this project may be obtained from Mr. Neil Bass, Environmental Resources Specialist, PM-PR, Kansas City District - U.S. Army Corps of Engineers, by writing the above address, or by telephone at 816-389-3667.

**NEPA REVIEW ENVIRONMENTAL ASSESSMENT  
&  
FINDING OF NO SIGNIFICANT IMPACT  
Abilene Levee Unit, Dickinson County, Kansas.  
PUBLIC LAW 84-99**

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**FINDING OF NO SIGNIFICANT IMPACT**

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**PUBLIC LAW 84-99  
Abilene Levee Unit, Dickinson County, Kansas.**

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**Section 1: INTRODUCTION**

This Environmental Assessment provides information that was developed during the National Environmental Policy Act (NEPA) public interest review of the proposed Public Law 84-99 Abilene Levee Unit, Dickinson County, Kansas.

**Section 2: AUTHORITY**

The Kansas City District – U.S. Army Corps of Engineers (CENWK), in cooperation with the project sponsor, City of Abilene, propose to construct the levee rehabilitation project under the authority of Public Law 84-99 of the Flood Control Act of 1944.

**Section 3: PROJECT LOCATION**

The Abilene Levee Unit Rehabilitation Project is located in Dickinson County, Kansas, just upstream and downstream from the 7<sup>th</sup> Street bridge over Mud Creek in the City of Abilene, Kansas. The repair work will be done along both banks of Mud Creek, and is described further below.

The Abilene Levee Unit is comprised of 15,597 linear feet of levees, 435 linear feet of spoil bank levees, 938 linear feet of floodwall, and 17,818 linear feet of channel excavation. These works are along both the Smoky Hill River and Mud Creek in Dickinson County, Kansas (Appendix I).

**Section 4: EXISTING CONDITION**

The declared flood event on 6 May 2007 caused the following damages to the Abilene Levee Unit:

The damages were displacement of rip-rap from approximately 180 linear feet of bank along Mud Creek. The displaced rip-rap ended up in the channel and is restricting the channel's capacity.

**Section 5: PURPOSE & NEED FOR ACTION**

The project is needed to rehabilitate the damages to the banks and channel of Mud Creek and protect the infrastructure of the adjacent landward resources. The rip-rap along Mud Creek in



the Abilene Levee Unit was displaced during the May 6, 2007 declared flood event. Prior to the May 2007 event, the Abilene Levee Unit flood protection works exceeded the 100 year level of flood risk management. In its current state, the channel of Mud Creek has a restricted conveyance capacity and the exposed banks are prone to erode more, thus further limiting the channel capacity. Limited conveyance capacity increases the likelihood of flooding. This existing condition exposes all public and private infrastructure to a higher level of risk from future flooding. Failure to ensure the flood risk management capability of the flood protection works system could keep area residents livelihood and social well-being in turmoil and subject to the continuous threat of flooding until a dependable level of flood protection is restored. A levee failure could adversely affect the tax base of the city and special districts, such as school districts. In addition, loss of jobs and residential houses previously protected by the flood protection works would also be incurred.

## **Section 6: ALTERNATIVES CONSIDERED BUT NOT SELECTED AS PREFERRED**

One alternative was considered but not selected as the preferred alternative. Alternative 2 – The No Action Alternative was not selected. A brief description of the alternative is provided below.

Alternative 2 – No Action Alternative. The No Action Alternative would involve no removal of displaced rip-rap from the channel, regrading of bank slopes, nor the placement of new rip-rap on the banks of Mud Creek. The No Action alternative would continue to expose public and private infrastructure to a high risk level of future flooding.

## **Section 7: RECOMMENDED ALTERNATIVE**

Alternative 1 - Rehabilitate the Abilene Levee Unit Dickinson County, Kansas. The recommended alternative consists of removing displaced rip-rap from the channel, regrading the slopes of exposed areas to their original configuration, and the placement of 18 inches of new rip-rap on the regraded areas on the banks of Mud Creek. This action will increase the channel capacity to pre-flood levels and prevent further erosion that could decrease channel capacity.

## **Section 8: NATIONAL ENVIRONMENTAL POLICY ACT REVIEW**

As part of the NEPA review for the proposed project, the CENWK circulated a Notice of Availability (Notice) of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI), dated May 27, 2008, with a thirty-day comment period ending on June 27, 2008 to the public and resource agencies. The Notice was e-mailed to individuals/agencies/businesses listed on CENWK-Regulatory Branch's e-mail mailing list. The Notice informed these individuals that the EA and Draft FONSI were available on the CENWK webpage or that they could request the EA and Draft FONSI in writing, in order to provide comment. No comments were received.

## **Section 9: AFFECTED ENVIRONNEMENT:**

A variety of resources along with the related environmental, economic and social effects were considered during the development and evaluation of project alternatives. These include: noise

levels; water quality; fish and wildlife; threatened and endangered species; vegetation; wetlands; agricultural lands; archaeological and historical resources; Flood Plain; economics and esthetics.

The project area consists of approximately 3,000 homes, the entire city's business district, and the associated infrastructure. The project area disturbance involves approximately 180 linear feet on the banks of Mud Creek. The repair work here takes place in an entirely urban setting of adjacent streets and a city park with manicured lawns.

## **Section 10: ENVIRONMENTAL CONSEQUENCES:**

### **Noise levels**

The recommended plan, Alternative 1, would result in minor short term construction related noise impacts. These impacts are the result of the operation of heavy machinery during project construction. These noise levels would be in addition, but similar to those produced by mechanical equipment and vehicular traffic which is routinely operated in the project area. Residences, businesses, churches, park areas and other areas sensitive to increased noise levels were identified in the project area. The increased noise levels will be so minimal and of such short duration as to have only a minimal impact on the project area.

Alternative 2 - The "No Action" alternative would produce no increase in noise levels in the project area.

### **Water quality**

The recommended plan, Alternative 1, could potentially result in minor, temporary, construction related adverse impacts to water quality resulting from site runoff and increased turbidity. The minor impacts associated with the recommended plan would be avoided and/or minimized to the greatest extent possible by the implementation of Best Management Practices and measures required under the National Pollutant Discharge Elimination System (NPDES). The best management practices would be designed to minimize the incidental fallback of material into waterways during construction and to minimize the introduction of fuel, petroleum products, or other deleterious material from entering into the waterway. Such measures could include use of erosion control fences; storing equipment, solid waste, and petroleum products above the ordinary high water mark and away from areas prone to runoff; and requiring that all equipment be clean and free of leaks. To prevent fill from reaching water sources by wind or runoff, fill would be covered, stabilized or mulched, and silt fences would be used as appropriate. However, a NPDES permit will not be required since site disturbance will be less than an acre. All appropriate measures will be taken to minimize erosion and storm water discharges during and after construction. The bank stabilization project would prevent bank erosion and limit sediment from entering the river from the project site.

Alternative 2 - The "No Action" Alternative could cause more erosion, thus causing even further decrease in channel conveyance capacity and more flooding.

### **Fish and wildlife**

The recommended plan, Alternative 1, would result in minor, temporary, construction related adverse impacts to fish and wildlife resources. The impacts to wildlife resources would be

related to noise, visual, and mechanical disturbance of the channel during construction. The impacts to fishery resources would be related to site runoff and increased turbidity, which could make feeding, breeding, and sheltering difficult for species not accustomed to these conditions. All impacts would be short term.

Alternative 2 – The “No Action” Alternative would have minimal effects on fish and wildlife resources. Some species may benefit from more structure in the stream. Aquatic invertebrates, small minnows, and other small fishes would use the instream rip-rap as cover and structure for laying eggs, ambushing prey, and to attach to.

### **Threatened and Endangered Species**

The recommended plan would have no adverse effects on any Federally-listed threatened or endangered species or their habitat. The project site and adjacent areas have been disturbed for decades eliminating habitats for the American Burying Beetle, Bald Eagle, Eskimo Curlew, Least Tern, Peregrine Falcon, Piping Plover, Snowy Plover, Topeka Shiner, and Whooping Crane. No impacts to any state listed threatened or endangered species or their habitat were identified.

Alternative 2 – The “No Action” alternative would have no adverse effects on any Federally-listed threatened or endangered species or their habitat. No impacts to any state listed threatened or endangered species or their habitat were identified.

### **Vegetation**

The recommended plan, Alternative 1, would be constructed below the ordinary high water mark of Mud Creek and would only impact a monoculture of low growing grass. The city of Abilene will have the area reseeded using the specifications of the PL 84-99 Project following construction activities.

Alternative 2 – The “No Action” alternative would have a negative impact on the current monocultured grass. There could also be positive benefits as the banks erode and sediment builds up in the channel creating bars and mud flats that would be colonized by new vegetation. New vegetation might also be comprised of non native species which would have negative impacts on the area.

### **Wetlands**

The recommended plan, Alternative 1, would result in no impacts to wetlands.

Alternative 2 - The “No Action” Alternative would result in no impacts to wetlands.

### **Agricultural Land**

The recommended plan, Alternative 1, would have no impacts on agricultural land. The areas protected by the flood protection works project are all residential and commercial.

Alternative 2 – The “No Action” Alternative would not impact any agricultural activities because the area protected by the flood protection works project is all residential and commercial.

### **Archeological and Historical Resources**

A cultural resources review of the proposed levee repairs for the Abilene Levee Unit rehabilitation in Dickinson County, Kansas was conducted by the Kansas City District archeologist. No sites listed on or eligible for listing on the National Register of Historic Places are located within or near the proposed project area. Since all repair impacts will be limited to the stabilizing of banks of Mud Creek, the proposed project, Alternative 1, will have no potential to impact historic properties. Therefore, no SHPO coordination is required for the project. If project plans change and a new right-of-way or borrow is required, than SHPO coordination would be required.

If in the unlikely event that archeological materials are discovered during project construction, work in the area of discovery will cease and the discovery investigated by a qualified archeologist. The findings on the discovery would be coordinated with the Kansas SHPO and appropriate federally recognized Native American tribes.

Alternative 2 – The “No Action” Alternative would result in no effects to archaeological or historical resources.

### **Flood Plain**

The recommended plan, Alternative 1, would stabilize the banks of Mud Creek. This will secure the flood protection works project at its 100+ year level of flood protection. The area is located in the base floodplain and is subject to Executive Order 11988, “Floodplain Management”. As the recommended plan would not directly or indirectly support more development in the floodplain or encourage additional occupancy and/or modify of the base floodplain, the Corps has determined that the recommended plan complies with the intent of Executive Order 11988.

Alternative 2 – The “No Action” Alternative would increase the risk of flooding and expose all public and private infrastructure protected to a higher level risk of future flooding.

### **Economics**

With the implementation of the recommended plan, the levees would be restored to 100+ year level of flood protection. Public and private infrastructure and agricultural croplands protected by the levee prior to the flood damage would continue to be protected against a 100+ year flood event. Economic conditions are unlikely to change from those of pre-damage levee conditions with the repair of this levee system.

The “No Action” Alternative has a zero benefit to cost ratio and would continue to expose all public and private infrastructure to an increased risk of future flooding. People’s livelihood and social well-being would remain in turmoil, subject to the continuous threat of flooding until the level of flood protection is restored. Failure to repair the flood protection works could adversely affect the tax base of Abilene and special districts, such as school districts. In addition, loss of jobs and residential housing would also be incurred.

### **Esthetics**

Alternative 1, the recommended plan would result in minor long term adverse esthetic impacts associated with the construction activity. The repair work will return the project area to the pre-

flood existing esthetics. Mud Creek is a severely altered stream system offering many other areas that will have esthetics similar to the repaired project site.

Alternatives 2 – The “No Action” Alternative would have no effect on esthetics.

## **Section 11: CUMULATIVE IMPACTS**

The combined incremental effects of human activity are referred to as cumulative impacts (40CFR 1508.7). While these incremental effects may be insignificant on their own, accumulated over time and from various sources, they can result in serious degradation to the environment. The cumulative impact analysis must consider past, present, and reasonably foreseeable actions in the study area. The analysis also must include consideration of actions outside of the Corps, to include other State and Federal agencies. As required by NEPA, the Corps has prepared the following assessment of cumulative impacts related to the alternatives being considered in this EA.

Historically, the Smoky Hill River and its floodplain have been altered by bank stabilization, dams on the river and its tributaries, roads/bridges, agricultural and urban levees, channelization, farming, water withdrawal for human and agricultural use, urbanization and other human uses. These activities have substantially altered the terrestrial and aquatic ecosystem within the Smoky Hill River watershed.

The Corps, which administers Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, has issued and will continue to evaluate permits authorizing the placement of fill material in the Waters of the United States and/or work on, in, over or under a navigable water of the United States including the Missouri River and its tributaries. These flood protection works repair projects typically result in minor impacts to the aquatic ecosystem. The Corps, under the authority of the Public Law 84-99 Levee Rehabilitation and Inspection Program, has and will continue to provide rehabilitation assistance to Federal and non-Federal levee sponsors along the Smoky Hill River which participate in the Public Law 84-99 Program. These projects typically result in minor short term construction related impacts to fish and wildlife and the habitats upon which they depend. Resources typically affected by this type of project generally include, but are not limited to, wetlands, flood plain values, water quality, and fish and wildlife habitat. It should be noted that these projects do not result in an addition to flood heights or reduced flood plain area but are merely a form of maintenance to that which had previously existed.

Of the reasonably foreseeable projects and associated impacts that would be expected to occur, further urbanization of the floodplain will probably have the greatest impact on these resources in the future. The possibility of wetland conversion and the clearing of riparian habitat is ever present, and these activities also tend to impact these resources. Construction of additional levees may occur provided land becomes available for this purpose; however, the trend seems to be moving in the opposite direction and towards urban development. The era of major reservoir construction has likely past, thus impacts from these projects likely will not occur.

The adverse effects associated with the proposed project are short-term/minor associated with project construction. These minor adverse effects would be greatly offset by restoring the flood risk management capability and its associated social and economic benefits of the existing levee system. The PL84-99 Program is designed to merely bring the damaged flood protection works back to pre-existing conditions (i.e., the status quo). Thus, no significant cumulative impacts associated with the proposed rehabilitation of the existing levee system have been identified.

## **Section 12: MITIGATION MEASURES**

The recommended plan, Alternative 1, will result in impacts to mitigable resources as defined in USACE Planning regulations and under Section 404 of the Clean Water Act. The impacts are associated with the placement of rip-rap along the banks of Mud Creek below the OHM. These actions are authorized by General Permit Number NWKGP-41 and will only restore the banks to their pre-flood conditions. Therefore, no mitigation is proposed or warranted.

## **Section 13: COMPLIANCE WITH ENVIRONMENTAL QUALITY STATUTES**

Compliance with Designated Environmental Quality Statutes that have not been specifically addressed earlier in this report is covered in Table 1. Additional information is listed for the most pertinent statutes following Table 1.

## **Section 14: CONCLUSION & RECOMMENDATION**

The bank stabilization repairs on Mud Creek in Abilene, Kansas would protect adjacent residential areas and businesses. The flood risk management level achieved by the recommended plan, Alternative 1, would be the same as the original pre-flood levels. The recommended plan would result in no impacts to any Federally-listed threatened or endangered species or their habitat. The recommended plan would result in no impacts to any properties listed, proposed for listing, eligible for listing, or potentially eligible for listing in the National Register of Historic Places. The adverse effects associated with the proposed project are short-term/minor and are associated with the construction at the site. These minor adverse effects would be greatly offset by restoring the flood risk level to the flood protection works project and the adjacent protected lands. Alternative 1 – Rehabilitate the Abilene Levee Unit Dickinson County, KANSAS meets the project purpose and need of stabilizing the eroded banks and displaced rip-rap on Mud Creek. Of the two (2) alternatives considered, Alternative 1 – Rehabilitate the Abilene Levee Unit Dickinson County, Kansas is recommended because it is the only alternative that meets the project purpose and is consistent with protection of the human environment.

Based on coordination with the resource agencies and input gained through a public interest review, as documented in this Environmental Assessment, the Kansas City District – Corps of Engineers has made the determination that this project would have no significant impacts on the human environment including natural and cultural resources and Federally-listed threatened and endangered species; therefore, a Finding of No Significant Impact (FONSI) has been prepared. This NEPA decision document will be forwarded to the District Engineer with a recommendation for approval, following the end of the public review period.

## **Section 15: PREPARERS**

This EA and the associated FONSI were prepared by Mr. Neil Bass (Environmental Resource Specialist), with relevant sections prepared by Mr. Timothy Meade (Cultural Resources). The address of the preparers is: U.S. Army Corps of Engineers, Kansas City, District; PM-PR, Room 843, 601 E. 12th St, Kansas City, MO 64106.

**Table 1**  
**Compliance of Preferred Alternative with Environmental Protection**  
**Statutes and Other Environmental Requirements**

<b>Federal Policies</b>	<b>Compliance</b>
Archeological Resources Protection Act, 16 U.S.C. 470, et seq.	Full Compliance
Clean Air Act, as amended, 42 U.S. C. 7401-7671g, et seq.	Full Compliance
Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. 1251, et seq.	Full Compliance
Coastal Zone Management Act, 16 U.S.C. 1451, et seq.	Not Applicable
Endangered Species Act, 16 U.S.C. 1531, et seq.	Full Compliance
Estuary Protection Act, 16 U.S.C. 1221, et seq.	Not Applicable
Federal Water Project Recreation Act, 16 U.S.C. 4601-12, et seq.	Full Compliance
Fish and Wildlife Coordination Act, 16 U.S.C. 661, et seq.	Full Compliance
Land and Water Conservation Fund Act, 16 U.S.C. 4601-4, et seq.	Not Applicable
Marine Protection Research and Sanctuary Act, 33 U.S.C. 1401, et seq.	Not Applicable
National Environmental Policy Act, 42 U.S.C. 4321, et seq.	Full Compliance
National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470a, et seq.	Full Compliance
Rivers and Harbors Act, 33 U.S.C. 403, et seq.	Full Compliance
Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001, et seq.	Full Compliance
Wild and Scenic River Act, 16 U.S.C. 1271, et seq.	Not Applicable
Farmland Protection Policy Act, 7 U.S.C. 4201, et. seq.	Full Compliance
Protection & Enhancement of the Cultural Environment (Executive Order 11593)	Full Compliance
Floodplain Management (Executive Order 11988)	Full Compliance
Protection of Wetlands (Executive Order 11990)	Full Compliance
Environmental Justice (Executive Order 12898)	Full Compliance

**NOTES:**

- a. Full compliance. Having met all requirements of the statute for the current stage of planning (either preauthorization or postauthorization).
- b. Partial compliance. Not having met some of the requirements that normally are met in the current stage of planning.
- c. Noncompliance. Violation of a requirement of the statute.
- d. Not applicable. No requirements for the statute required; compliance for the current stage of planning.



Clean Water Act, Section 404 and 401

The recommended plan involves placement of fill material in a Water of the United States and therefore, Clean Water Act, Section 401 Water Quality Certification and Section 404(b)(1) were covered under GP-41 and is located in Appendix II.

Clean Water Act, Section 402

A NPDES permit was not required since disturbance was less than one acre.

Endangered Species Act, Section 7

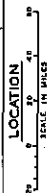
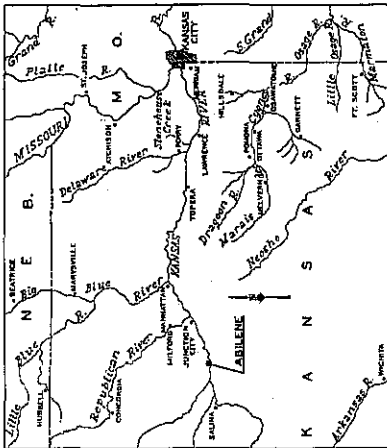
The Corps of Engineers has made a determination that no impacts to any federally listed threatened or endangered species or their habitat would occur with the project action. Coordination of ESA would be completed upon review of this EA and concurrence of this determination with the USFWS.

National Historic Preservation Act

No sites listed on or eligible for listing on the National Register of Historic Places are located within or near the proposed project area. Therefore, no coordination with the Missouri State Historic Preservation Office (SHPO) is required for the project.

# **APPENDIX I – PROJECT MAPS**

*City of Abilene*  
*P.L. 84-99 Levee Rehabilitation Project*  
*Dickinson County, Kansas*  
*May 2008*



### LEGEND

Construct levee \_\_\_\_\_  
 Existing levee \_\_\_\_\_  
 Existing spoil bank \_\_\_\_\_  
 Construct floodwall \_\_\_\_\_  
 Channel \_\_\_\_\_  
 Existing channel \_\_\_\_\_  
 Slope protection \_\_\_\_\_  
 Existing slope protection \_\_\_\_\_  
 Waste fill area & number 10  
 U.S.G.S. Shfr. Gage \_\_\_\_\_

## GENERAL NOTES

This sheet plotted on local plane co-ordinate system based on open traverse.  
For levels and channel alignment data and construction right-of-way see Sheet No. 2, 3 & 4.  
Elevations are referred to mean sea level, U. S. C. & S., 1929 general adjustment.  
All utility lines and poles within the construction limits will be relocated or altered by others.  
Topography from Corps of Engineers plane table sheets of November 1955.  
Contours reflect conditions existing prior to construction.

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## RECORD DRAWING

DATE 1980  
CONT NO RA-23-028-CIVILIAN-99-94

SYN.	DESCRIPTION	DATE	APPRO.
	Revised for "As Built" conditions.		Marked

KANSAS RIVER BASIN  
**ABILENE, KANSAS**  
MUD CREEK  
STAGE II

LOCATION, VICINITY AND INDEX

In 14 sheets  
U. S. ARMY ENGINEERING  
KANSAS CITY  
Submitted: *Q.M. 228*  
Head, Earthwork



## **APPENDIX II – NEPA REVIEW**

*City of Abilene  
P.L. 84-99 Levee Rehabilitation Project  
Dickinson County, Kansas  
May 2008*

# PUBLIC NOTICE



US Army Corps  
of Engineers  
Kansas City District

Permit No. GP-41 (2007-2078)  
Issue Date: March 21, 2008

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STATES OF MISSOURI AND KANSAS - Including INDIAN COUNTRY  
ISSUANCE OF GENERAL PERMIT (GP) 41  
FLOOD RECOVERY AND REPAIR ACTIVITIES

The U.S. Army Corps of Engineers, Kansas City District **HAS ISSUED** GP-41 (copy enclosed) for protection and repair of existing flood damaged structures, damaged land areas and damaged fills, under authority of Section 10 of the Rivers and Harbors Act of 1988 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

**Duration of this General Permit:** This GP is issued and is in effect for five (5) years, from March 21, 2008 until March 21, 2013, unless revoked or specifically extended.

**Notification Procedures (Post and Preconstruction):** Preconstruction notification is required by the General Public for all activities involving obtaining borrow from forested wetlands, borrowing material from potential migratory bird nesting areas, clearing trees along stream channels, working in areas with known exotic species, and/or if the proposed repair activity includes restoration of a stream channel back to the original, pre-flood location. Other authorized activities that meet the terms and limits of this GP may proceed without preconstruction notification to the Corps of Engineers. However, post construction reporting is required for all activities undertaken under this GP. See GP Special condition "d" and Appendix I for more information on notification requirements.

**APPLICANT:** General Public

**PROJECT LOCATION:** In waters of the United States in the States of Missouri and Kansas, including Indian Country within Kansas boundaries that are declared flood disaster areas by the Governor of either state and/or the President of the United States of America.

**AUTHORITY:** Section 10 of the Rivers and Harbors Act of 1988 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

**ACTIVITY:** Excavation or placement of fill material for protection and/or repair of existing flood damaged structures, damaged land areas and/or damaged fills as follows: a. Repair of levees to existing elevations and cross-section, including breach closures and borrow operations, b. Bridge embankment protection (armoring) and/or repair, c. Repair of pre-existing highway or railroad embankments and the addition or repair of stone (armoring) protection, d. Repair of pre-existing utility protection structures, e. Placement of rock and/or earth materials for stream/ditch bank protection and/or stream/ditch bank restoration, f. Drainage channel/ditch restoration to

pre-flood capacity and flow line unless the flow line must be altered due to other damage associated with the flood event, g. Restoration of creek channels to pre-flooding alignment and capacity, and h. Construction of temporary roads and temporary fills to facilitate the completion of any of the listed activities.

Note: Maintenance of existing flood damaged structures and/or flood damaged fills, which have been previously authorized, may be authorized by Nationwide Permit No. 3 or exempted by Part 323.4 of Federal regulations 33 CFR 320-331. The repair of uplands damaged by storms, floods or other discrete events may be authorized by Nationwide Permit No. 45 upon notification and review by the appropriate Corps of Engineers District, Regulatory Branch.

**INDIAN COUNTRY:** Work under this permit is not authorized in Indian Country until the applicant obtains individual Section 401 Water Quality Certification from the U.S. Environmental Protection Agency (EPA), Region VII, Watershed Planning and Implementation Branch, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101 (913-551-7003).

EPA may issue programmatic water quality certification during the authorization period of this permit which ends December 31, 2013. If issued, the Corps of Engineers will announce by public notice and post that certification to the Regulatory Program webpage:  
<http://www.nwk.usace.army.mil/regulatory/regulatory.htm>.

**SECTION 401 WATER QUALITY CERTIFICATION:** Conditions of any individual or programmatic Section 401 Water Quality Certifications issued by the Missouri Department of Natural Resources (MDNR - for Missouri), Kansas Department of Health and Environment (KDHE - for Kansas), and EPA (for Indian Country) are conditions of this GP. General Condition 5 of the GP states: "If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit."

**ADDITIONAL INFORMATION:** Additional information about this general permit may be obtained by contacting Mr. Douglas R. Berka, Regulatory Project Manager, Kansas City District Regulatory Branch (ATTN: OD-R) 700 Federal Building, Kansas City, Missouri 64106, at 816-389-3657 or via email at [Douglas.R.Berka@usace.army.mil](mailto:Douglas.R.Berka@usace.army.mil). All inquiries concerning this public notice should be directed to the above address.

Enclosure

## DEPARTMENT OF THE ARMY PERMIT

Permittee General Public

Permit No. NWK GP-41

Issuing Office U.S. Army Corps of Engineers, Kansas City District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** To excavate or place fill material for protection and/or repair of existing flood damaged structures, damaged land areas and/or damaged fills as follows:

- a. Repair of levees to existing elevations and cross-section, including breach closures and borrow operations
- b. Bridge embankment protection (armoring) and/or repair
- c. Repair of pre-existing highway or railroad embankments and the addition or repair of stone (armoring) protection
- d. Repair of pre-existing utility protection structures
- e. Placement of rock and/or earth materials for stream/ditch bank protection and/or stream/ditch bank restoration
- f. Drainage channel/ditch restoration to pre-flood capacity and flow line unless the flow line must be altered due to other damage associated with the flood event
- g. Restoration of creek channels to pre-flooding alignment and capacity
- h. Construction of temporary roads and temporary fills to facilitate the completion of any of the listed activities

Note: Maintenance of existing flood damaged structures and/or flood damaged fills, which have been previously authorized, may be authorized by Nationwide Permit No. 3 or exempted by Part 323.4 of Federal regulations 33 CFR 320-331. The repair of uplands damaged by storms, floods or other discrete events may be authorized by Nationwide Permit No. 45 upon notification and review by the appropriate Corps of Engineers District, Regulatory Branch.

**Project Location:** In Waters of the United States, (rivers, lakes, streams, and wetlands) within the State of Kansas, including Indian Country, and within the State of Missouri that are declared flood disaster areas by the Governor of either state and/or the President of the United States.

### Permit Conditions:

#### General Conditions:

1. The time limit for completing the work authorized ends on December 31, 2013. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

See continuation sheets, pages 4, 5, and 6 of this document.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(x) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(x) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.



5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

*General Public - Signature Not Required*

\_\_\_\_\_  
(PERMITTEE)

\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
(DISTRICT COMMANDER)

ROGER A. WILSON, JR.

BY: MARK D. FRAZIER

Chief, Regulatory Branch

Operations Division

21 March 2008

\_\_\_\_\_  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)

**Special Conditions:**

- a. You must sign and return the attached "Compliance Certification" after the authorized work and any required mitigation is completed. Your signature will certify that you completed the work in accordance with this permit, including the general and the special conditions, and that any required mitigation was completed in accordance with the permit conditions.
- b. (Activities occurring in navigable waters under Section 10 of the Rivers and Harbors Act of 1899 Only) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- c. If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor; and, you must give a copy of this entire permit to the contractor.
- d. You must contact the Corps of Engineers, submit application materials outlined in Appendix I, and you must submit a mitigation plan prior to completing any flood recovery/repair activity when the repair involves obtaining borrow from forested wetland, borrowing material from potential migratory bird nesting areas, clearing trees along stream channels, working in areas with known exotic species, and/or if the proposed repair activity includes restoration of a stream channel back to the original, pre-flood location. All other flood repair activities, including all repairs supervised by the Corps of Engineers, pursuant to Public Law 84-99 and/or all repairs supervised by the United States Department of Agriculture, pursuant to the Emergency Watershed Protection Program or to the Emergency Conservation Program can be completed without pre-construction notification to the Corps of Engineers. However, all completed flood repair work, authorized by this permit, must be reported to the Corps of Engineers, Regulatory Branch, within 60 days of completing the project. The report must include the location of the work, as-built drawings of the structure(s) and/or fill(s), and a discussion of the avoidance and minimization measures incorporated into the project and mitigation measures employed.
- e. You must NOT dredge or excavate from the Missouri River or from the Kansas River in order to obtain borrow material for any flood repair project authorized by this permit.
- f. You must employ measures to prevent spilled fuels, lubricants, excessive suspended solids including dredged material, and/or wet concrete from entering the waters of the United States and formulate a contingency plan to be effective in the event of a spill.
- g. You must use clean, uncontaminated materials for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into the waters of the United States by natural runoff or by leaching. Use of small aggregate material less than 20 lbs per aggregate, such as creek gravel, for stabilization and erosion control is prohibited.
- h. You must excavate or fill in the watercourse so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation. Activities should be conducted during low water periods and outside major spawning season for fish, unless a waiver is obtained from the Corps of Engineers. Crossings of waterways and use of construction machinery in waterways should be limited to the minimum extent necessary.
- i. You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body. All construction debris must be disposed of in an upland site, outside the floodplain, and in such a manner that it cannot enter into a waterway or into a wetland.
- j. You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.

**Special Conditions (continued):**

- k. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work. You must avoid the removal of mature trees to prevent potential impacts to bald eagle roost sites. Work should be limited to one side of the channel only. However, work from both sides of the channel is permitted if it is demonstrated that it results in minimizing tree clearing. Vegetated riparian buffer areas should be included along both sides of any channel restoration projects. All wooded areas cleared for site access must be allowed to return to forested habitat. Mitigation may be required for other timber clearing.
- l. Upon completion of earthwork operations, you must seed, replant or otherwise protect from erosion all fills in the water or on shore, and other areas on shore disturbed during construction. If seeding does not successfully stabilize the disturbed soil areas by the end of the first growing season, you must implement alternate measures, such as placing riprap, slope terracing with untreated railroad ties, gabions or concrete blocks, or additional vegetative plantings, to protect the disturbed areas from further erosion. Clearing, grading, and replanting should be planned and timed so that only the smallest area is in a bare soil condition. You must contact the Corps of Engineers prior to beginning work on any additional erosion control measures so that we can determine if additional authorization is required.
- m. You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in an upland area above the ordinary high water mark and at a location where the concrete and wash water cannot enter the water body or an adjacent wetland area.
- n. You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.
- o. You must use only graded rock, quarry-run rock and/or clean concrete rubble for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume. If you use concrete rubble, you must break all large slabs to conform to the well graded requirement, and remove all exposed reinforcement rods, trash, asphalt, and other extraneous materials before you place the rubble in the waters of the United States. Size and gradation requirements can be changed provided approval is received from the Corps' Regulatory Branch prior to placement.
- p. You must completely remove all temporary fills, including sand bags (to the extent practicable), in the Waters of the United States within 30 days of the end of the flood emergency and disposed of in accordance with special condition "h" above, unless the temporary fill is to be incorporated in the final repair of the structure. If sand bags are needed for a longer duration until permanent repairs are made, you must request a waiver of this condition in writing. Temporary construction of levees to protect agricultural land in areas where no levees previously existed, are not authorized.
- q. You must avoid impacts to wetlands to the fullest extent practicable. When wetlands impacts are unavoidable, borrow site selection will be based on the following order of preference: upland (non-wetland) sources, areas riverward of the levee previously used for borrow, open prior converted cropland, farmed wetlands, or other authorized excavation sites. You must mitigate for all unavoidable proposed wetland excavation or fill activities authorized by this permit. You must develop mitigation plans on a case-by-case basis which must be approved by the Corps. This permit does not authorize actions designed to drain or otherwise convert wetlands to other uses, nor actions where a practicable alternative to impacting wetlands is available unless the Corps of Engineers, in consultation with other resource agencies, determine that sediment removal from existing wetlands will restore wetland functions and create valued habitat diversity. All borrow areas should have 5:1 horizontal to vertical side slopes and the water depth should be three feet deep or less under normal circumstances.
- r. You must place all fills and structures such that they do not result in stream channel constriction or in redirection of flows in such a way as to cause upstream or downstream erosion. Channelization projects or shortening of waterways, other than restoration of creek channels to pre-flood alignment, are not authorized.
- s. You must not undertake actions that are likely to jeopardize the existence of a threatened or endangered species or a species proposed for such designation as defined in the Federal Endangered Species Act, nor actions which are likely to destroy or adversely modify the critical habitat of such species. If the project requires the removal of mature trees along stream channels or from forested wetland you must contact the Corps of Engineers prior to any tree clearing activity.

**Special Conditions (continued):**

t. You must avoid activity in the proximity of a property listed in or eligible for listing in the National Register of Historic Places unless, after coordination with the State Historic Preservation Office of the affected state and/or the Advisory Council on Historic Preservation, a determination of "no effect" or "no adverse effect" is made in accordance with criteria established by 36 CFR 800.

If an inadvertent discovery of any cultural or archaeological resource occurs you must immediately contact this office and you should suspend work in the area until a determination of eligibility for listing on the National Register of Historic Places is completed and any necessary consultation under Section 106 of the National Historic Preservation Act is completed.

u. You must not undertake any activity that results in a new structure or replacement of a previously authorized structure with an increase in scope or design of the original structure. Small changes that do not affect elevations, such as the reconstruction of a levee around a scour hole at pre-existing elevations, and that do not convert wetland to upland (non-wetland) or a different wetland use beyond what is unavoidable such as to go around a scour hole, may be authorized upon notification to the Corps. Levee breach repairs constructed on new alignments must be setback farther from the stream channel than the original alignment.

v. You must contact the Missouri Department of Natural Resources, Water Pollution Control Program, P.O. Box 176, Jefferson City, Missouri 65102-0176, or the Kansas Department of Health and Environment, Bureau of Water, Curtis State Office Building, 1000 Southwest Jackson, Topeka, Kansas 66612, in order to determine the need for a state permit for land disturbance, return water, or other activities that normally require such permits. Use of GP-41 shall not be construed or interpreted to imply the requirements for other permits are replaced or superseded. Any national pollutant discharge elimination system (NPDES) permits, general permits for land disturbance, or other requirements shall be complied with.

w. You must notify the Corps of Engineers if one of the following common exotic species occurs in the project area. The zebra mussel (*Dreissena polymorpha*), Eurasian watermilfoil (*Myriophyllum spicatum*), purple loosestrife (*Lythrum salicaria*), Johnson grass (*Sorghum halepense*), sericia lespedeza (*Lespedeza cuneata*), salt cedar (*Tamarix spp.*), and reed canary grass (*Phalaris arundinacea*). You must take appropriate actions to insure the prevention of the spread of any exotic species. The following best management practice can help prevent the spread of these species. Equipment brought on the project site should be washed to remove dirt, seeds and plant parts. If the equipment has been used in a body of water in the last 30 days it can be washed at a commercial car wash or dried for five or more days before using the equipment in another body of water. In addition, before transporting equipment from the project site visible water, mud, plants and animals should be removed. Waters that the zebra mussel is known to inhabit in Kansas and in Missouri can be found at the following website:

<http://nas.er.usgs.gov/queries/zmbyst.asp>

x. For activities occurring in Indian Country, you must request and obtain individual Section 401 Water Quality Certification from the Environmental Protection Agency (EPA). You may contact the EPA by writing US EPA, Region 7 Tribal Coordinator, 901 North 5th Street, Kansas City, Kansas 66101, or by calling (913) 551-7498. You must receive Section 401 Water Quality Certification, and comply with the conditions of that certification, during performance of any work under this permit. Should EPA issue programmatic certification for this GP during the term of the GP, the Corps will issue a supplemental public notice and General Condition 5 of the permit applies.

## APPENDIX I

### Criteria for Authorization by General Permit NWKGP-41

1. This general permit authorizes activities proposed by the general public, railroads, transportation departments, pipeline and utility companies, and government agencies.
2. If you propose to work under the authority of this General Permit and the project requires preconstruction notification as outlined in special condition "d" of the permit, you must notify the appropriate Corps of Engineers district within 18 months of the end of the flood emergency (when the nearest river gauge drops below flood stage for two months), and receive authorization prior to starting work in the Corps jurisdiction. You must submit the following information:
  - a. A completed application form ENG 4345 or a letter which includes all information required by form ENG 4345. The ENG 4345 is available at: [www.nwk.usace.army.mil/regulatory/regulatory.htm](http://www.nwk.usace.army.mil/regulatory/regulatory.htm)
  - b. You must clearly describe the proposed work so we can clearly and readily determine whether or not the proposed work complies with the General Permit.
  - c. The flood repair activities must be in counties declared disaster areas by the Governor of the State of Kansas, the Governor of the State of Missouri and/or the President of the United States.
  - d. An 8 1/2" x 11" drawing(s) showing the details of the proposed work.
  - e. An 8 1/2" x 11" map with the location of the proposed project clearly marked, including the Section, Township, and Range or the Latitude and Longitude location (decidegrees).
  - f. Discussion of possible alternatives and why they were not selected.
  - g. Also, as project proponent, you must send copies concurrently to the following addresses, but we will not necessarily solicit comments from these agencies. We will give these agencies an opportunity to request that we take discretionary authority to require that you apply for an individual permit, if a potential significant problem is identified.

#### 1. For projects in Missouri contact:

U.S. Fish and Wildlife Service  
Columbia Field Office  
101 Park DeVille Drive, Suite A  
Columbia, Missouri 65203  
(573) 234-2132

U.S. Environmental Protection Agency  
Watershed Planning and Implementation Branch  
901 North Fifth Street  
Kansas City, Kansas 66101.  
(913) 551-7003

Missouri Department of Natural Resources  
Water Pollution Control Branch  
P.O. Box 176  
Jefferson City, Missouri 65102  
1-800-361-4827 or (573) 751-1300

Missouri Department of Natural Resources  
Historic Preservation Program  
P.O. Box 176  
Jefferson City, Missouri 65102  
(573) 751-7958

APPENDIX I (continued)

Missouri Department of Conservation  
Policy Coordination  
P.O. Box 180  
Jefferson City, Missouri 65102-0180  
(573) 522- 5115

\* Federal Emergency Management Agency  
Region VII  
9221 Ward Parkway, Suite 300  
Kansas City, Missouri 64114-3372  
(816) 283-7063

2. For projects in Kansas contact:

U.S. Fish and Wildlife Service  
Manhattan Field Office  
2609 Anderson Avenue  
Manhattan, Kansas 66502  
(785) 539-3474

Kansas Department of Health and Environment  
Bureau of Water  
Curtis State Office Building  
1000 Southwest Jackson Street  
Topeka, Kansas 66612  
(785) 296-1500

Kansas Department of Wildlife and Parks  
512 Southeast 25th Avenue  
Pratt, Kansas 67124  
(620) 672-5911

\* Federal Emergency Management Agency  
Region VII  
9221 Ward Parkway, Suite 300  
Kansas City, Missouri 64114-3372  
(816) 283-7063

\* You must contact FEMA for all proposed development located in the 100-year floodplain of a National Flood Insurance Program (NFIP) participating community in order to comply with local floodplain management regulations and secure a floodplain development permit from that community.

3. For projects not requiring pre-construction notification, a report of the completed repair activities must be submitted that includes the location of the work, as-built drawings of the structure(s) and/or fill(s), and a discussion of the avoidance and minimization measures incorporated into the project and mitigation measures employed.

4. We may reevaluate the cumulative impacts of this general permit at our discretion at any time. We will reevaluate cumulative impacts at least every five (5) years.

5. The following is a list of flood damaged structures, damaged land areas and/or damaged fills authorized to be repaired under this general permit:

- a. Repair of levees to existing elevations, including breach closures and borrow operations
- b. Bridge embankment protection (armoring) or repair
- c. Repair of pre-existing highway and/or railroad embankments and armor protection
- d. Repair of pre-existing utility protection structures
- e. Placement of rock and/or earth materials for emergency bank protection or restoration

**APPENDIX I (continued)**

- f. Drainage ditch restoration to pre-flood capacity and flow line unless the flow line must be altered due to other damage associated with the flood event
  - g. Restoration of creek channels to pre-flooding alignment, capacity and flow line
  - h. Construction of temporary haul roads to facilitate any of the above listed activities
6. The District Engineer may require an individual permit on a case-by-case basis for any activity authorized herein.
7. You must complete the authorized work within the five year issuance period of the GP. If you need additional time to complete repairs or if flood damage occurs within the last year of the GP applicants must contact the appropriate Corps District for an extension of the authorization to complete the needed work. Contact should be made at least one month in advance of the GP expiration date.
8. Flood repair activities, supervised by the U. S. Army Corps of Engineers, pursuant to Public Law 84-99, and/or supervised by the United States Department of Agriculture, pursuant to the Emergency Watershed Protection Program or the Emergency Conservation Program, do not require notification to the Corps of Engineers, Regulatory Branch. It is the responsibility of these federal agencies to comply with all environmental laws and Presidential Executive Orders.

## COMPLIANCE CERTIFICATION

*Special condition "a" of this permit document requires that you submit a signed certification regarding the completed work and any required mitigation. This certification page satisfies this condition if it is provided to the Kansas City District at the address shown at the bottom of this page upon completion of the project.*

APPLICATION NUMBER: General Permit No. 41 (NWK 2007-02078)

APPLICANT (Enter name and mailing address):

PROJECT LOCATION (Enter latitude & longitude (decidegrees) or Section, Township and Range, County, State):

- a. I certify that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions.
- b. I certify that any required mitigation was completed in accordance with the permit conditions.
- c. Your signature below, as permittee, indicates that you have completed the authorized project as certified in paragraphs a and b above.

\_\_\_\_\_  
(PERMITTEE)

\_\_\_\_\_  
(DATE)

Return this certification to:

U.S. Army Corps of Engineers  
700 Federal Building  
601 East 12<sup>th</sup> Street  
Kansas City, MO 64106-2896  
ATTN: OD-R





Kathleen Sebelius, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

Division of Environment

January 31, 2008

Mr. Douglas R. Berka  
U.S. Army Corps of Engineers  
Kansas City Field Office; 700 Federal Building  
601 East 12th Street  
Kansas City, Missouri 64106-2896

Section 401 Water Quality Certification

RE: (2007-0078) PROPOSED REGIONAL GENERAL PERMIT NO. 41 FOR  
EXCAVATION OR PLACEMENT OF FILL MATERIAL FOR THE PERMANENT  
PROTECTION AND/OR REPAIR OF FLOOD DAMAGED STRUCTURES, DAMAGED LAND  
AREAS AND/OR DAMAGED FILLS IN THE STATES OF KANSAS AND MISSOURI.  
PERMITTEES: General Public, Railroads, Transportation Departments, Pipeline and  
Utility Companies and Government Agencies

Dear Mr. Berka:

The Kansas Department of Health and Environment has received your request for  
Section 401 Water Quality Certification. The KDHE has determined the project has the  
following water pollutant discharge sources:

- a. Repair of levees to existing elevations and cross-section, including breach  
closures and borrow operations
- b. Bridge embankment protection (armoring) or repair
- c. Repair of pre-existing highway or railroad embankments and the addition or  
repair of stone (armoring) protection
- d. Repair of pre-existing utility protection structures
- e. Placement of rock and/or earth materials for stream/ditch bank protection  
and/or stream/ditch bank restoration

BUREAU OF WATER – WATERSHED MANAGEMENT SECTION  
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 420, TOPEKA, KS 66612-1367

Voice 785-296-4195 Fax 785-296-5509

<http://www.kdheks.gov/nps/index.html>

- f. Drainage ditch restoration to pre-flood capacity and flow line unless the flow line must be altered due to other damage associated with the flood event
- g. Restoration of creek channels to pre-flooding alignment and capacity
- h. Construction of temporary haul roads to facilitate the completion of any of the listed activities

Discharges from these sources if not minimized or otherwise controlled may cause violations of the provisions of Kansas Water Quality Standards found at KAR 28-16-28 et seq.

Pursuant to Section 401 and KAR 28-16-28(c) the Kansas Department of Health and Environment finds this project will not result in a violation of Kansas Water Quality Standards and herewith issues a Water Quality Certification for execution and subsequent operation of the project subject to the following conditions:

- I. **Limitations of this Certification:** All Section 404 activities within the borders of Indian owned and operated lands are not covered by this certification. Individuals proposing projects which impact those waters are responsible for contacting the appropriate individual at the following numbers:

Prairie Band Pottawatomie Indians, Planning Department, 785/966-2946

Kickapoo Tribe in Kansas, Environmental Office, 785/486-2601

Iowa of Tribe of Kansas and Nebraska, 785/595-3258

Sac and Fox Tribe of Missouri, 785/742-4707

Environmental Protection Agency Region VII Indian Lands Contact,  
913/551-7498

II.

**General Conditions**

1. **Certification Retention:** The applicant shall retain this water quality certification on the project site through the duration of the project to accommodate inspection.
2. **Kansas Water Pollution Control General Permit for Stormwater Runoff from Construction Activities:** This certification does not relieve the applicant of the responsibility to determine if the project is subject to the requirements of **General NPDES Permit** and to secure such permit as necessary. Questions and inquiries may be directed to:

Mr. Larry Hook  
Kansas Department of Health and Environment  
Bureau of Water Industrial Program Section  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367  
Phone 785/296-5549; FAX: 785/296-5509  
[www.kdheks.gov/stormwater](http://www.kdheks.gov/stormwater)

3. **Project Water Quality Protection Plan:** Any person wishing to use a Section 404 GP 41 Permit shall prepare and follow a written project water quality protection plan (PWQPP.) The PWQPP shall identify components of the permitted activity (i.e. solid waste handling, fuel storage and leaks, sediment from construction etc.) which may or will result in the discharge of pollutants to waters of the state. For each component which may discharge pollutants to waters of the state, the plan shall set out the physical, structural and management measures to be implemented to prevent or minimize the discharge of pollutants to waters of the state. (Activities requiring a construction stormwater permit, as described above, also require a stormwater pollution prevention plan which will serve as the PWQPP.)

**The permittee is required to submit the PWQPP to KDHE only if the project impacts Outstanding National Resource, Exceptional State or Special Aquatic Life Use Waters per condition #4 below.**

4. **Outstanding National Resource Waters, Exceptional State and Special Aquatic Life Support Use Waters:** In the event the permitted activity occurs in or within one half (2) mile of an Outstanding National Resource Water as defined pursuant to K.A.R. 28-16-28b(pp) and K.A.R. 28-16-28c(a)B(3), an Exceptional State Water pursuant to K.A.R. 28-16-28b(y) and K.A.R. 28-16-28c(a)B(2), or a Special Aquatic Life Support Use Water designated pursuant to K.A.R. 28-16-28d(b)(2)(A), the person responsible for initiating the activity shall submit a copy of the PWQPP to:

Kansas Department of Health and Environment  
Bureau of Water - Watershed Management Section  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367  
[nps@kdhe.state.ks.us](mailto:nps@kdhe.state.ks.us)

A table and state map of **Outstanding National Resource Waters, Exceptional State and Special Aquatic Life Support Use Waters** can be found at:  
<http://www.kdheks.gov/nps/resources/specwaterinfo.pdf>.

The permittee should also be aware of the following Kansas water quality protection regulations associated with special waters:

**K.A.R. 28-16-28c(a)B(2)**-AWherever state surface waters constitute exceptional state waters, discharges shall be allowed only if existing uses and existing water quality are maintained and protected.@

**K.A.R. 28-16-28c(a)B(3)**-AWherever state surface waters constitute an outstanding national resource water existing uses and existing water quality shall be maintained and protected. New or expanded discharges shall not be allowed into outstanding national resource waters.@

5. **Solid Waste Disposal:** All solid waste materials produced during the execution of the project shall be disposed in accordance with the provisions of Kansas Solid Waste Management Statutes and regulations and applicable local regulations. Direct inquiries to:

KDHE, Bureau of Waste Management  
1000 SW Jackson Street, Suite 320  
Topeka, Kansas 66612-1366  
Phone: 785/296-1600; FAX: 785/296-1592  
[www.kdhe.state.ks.us/waste/index.html](http://www.kdhe.state.ks.us/waste/index.html)

6. **Equipment Staging Areas and Project Closure:** Upon completion of the project, disturbed areas shall be expeditiously stabilized with temporary and permanent vegetation, bio-artificial ground cover or other appropriate non-polluting material. Fertilizer application to establish and maintain vegetation shall be done in a manner that will not contribute to the current nutrient load to any of the surface waters impacted by the project. The person responsible for the permitted activity shall monitor and maintain cover materials until such time as the site is stabilized. Project closure procedures shall be documented in the Project Water Quality Protection Plan per condition No. II. 3.
7. **Riparian Areas:** Minimize removal or disturbance of riparian areas (areas adjacent to water bodies). KDHE encourages the use of vegetation consistent with adjoining vegetation materials to minimize impacts from improper handling of fertilizers and pesticides.
8. **Discharge of Floatable Materials:** Pursuant to K.A.R. 28-16-28b (uu)(1), (3) and (4), the person responsible for executing the permitted activity shall assure good house keeping is practiced at the site to minimize the discharge of floatable materials such as personal refuse including food containers, packing materials, and other litter. Appropriate measures shall be taken to capture and/or recover any floatable materials discharged to waters of the state originating with the permitted project.

9. **Fuel, Chemical and Materials Storage:** Fuel, chemical and other materials stored at the project site shall be stored in a manner that minimizes the discharge of product to waters of the state. Spill minimization and prevention measures and procedures shall be documented in the Water Quality Protection Plan.
10. **Spill Response and Reporting:**
  - 1.) **Spill response and cleanup:** In the event a spill of fuel, chemical or other water quality degrading materials stored or transported on the site occurs, the permittee shall or with the assistance of professional response personnel, expeditiously control or contain the spill and initiate clean up procedures. The applicant shall immediately contact 911. Spill response and cleanup actions shall be documented in the PWQPP. The applicant should also contact the appropriate Kansas Department of Health and Environment [www.kdhegov/befs/#districts](http://www.kdhegov/befs/#districts) or look in your local phone directory) to confirm cleanup activities. Finally, KDHE strongly encourages the permittee to establish and post a sign that includes phone contact numbers for the appropriate local emergency response unit, KDHE district office, and the project manager/owner.
  - 2.) **Reporting:** The Kansas Department of Health and Environment shall be notified of all fuel spills or unauthorized discharge of pollutants immediately. Contact KDHE at 785/296-1679, anytime for spill reporting requirements. The Kansas Adjutant Generals Office should also be contacted (785/296-8013) as well as the National Spill Response Center (1-800-424-8802).
11. **Drinking Water Intakes:** The person responsible for the permitted activity shall avoid adverse impacts on public water supplies. Whenever permitted activities occur within one mile upstream of a public drinking water supply - surface water intake, the applicant shall contact the official in charge of the public drinking water supply to apprise the drinking water supply official of the permitted activity. The person responsible for the permitted activity shall consider the suggestions and recommendations of the public water supply official when preparing the PWQPP.
12. **Treated Wastewater Effluent Mixing Zones:** As a general guideline any Section 404 activity within one-half (2) mile upstream or one-half (2) mile downstream of a permitted wastewater effluent discharge may impact the effluent mixing zone. The person responsible for the permitted activity shall determine if the project will adversely impact the wastewater effluent mixing zones and take appropriate measures to avoid altering or changing the mixing zone. This may include but is not limited to:

- 1) The construction or placement of a recreation oriented facility or structure (i.e. boat ramp, walkway) which may require modification of the beneficial use designation to accommodate contact or non-contact recreation, thereby increasing the effluent limitations for the permit.
- 2) Any activity which may alter or remove the stream channel geometry or natural oxygenation abilities of the stream such as bridge construction, channelization, stream channel substrate modification etc.

The person responsible for the permitted Section 404 activity shall advise and describe to the waste water discharge permittee and KDHE any potential mixing zone impacts and the measures the person responsible for the Section 404 activity will take to minimize adverse impacts on the mixing zone. Inquiries should be directed to:

Kansas Department of Health and Environment  
Bureau of Water - Municipal Programs Section  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367  
Phone: 785/296-5527; FAX: 785/296-5509

13. **Total Maximum Daily Load:** Any Section 404 activity within a watershed with a Total Maximum Daily Load (the amount of pollution a water body can receive and maintain its designated uses: see <http://www.kdheks.gov/tmdl/index.htm>) is strongly encouraged to contact the assigned KDHE watershed field coordinator. A service area map for the three watershed field coordinators is attached (see [www.kdheks.gov/nps](http://www.kdheks.gov/nps)) once construction is started.

### III. Special Conditions for Specific Nationwide Permits

1. **Outfall Structures and Maintenance (construction):**  
Controls shall be in place to stabilize all areas of the bed and bank around the pipe or adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.
2. **Maintenance; Utility Line Activities; and -Minor Discharges (pipelines included):**  
Hydrostatic tests for pipeline activities shall be approved prior to discharge of water used for the test. Please contact:

Kansas Department of Health and Environment  
Bureau of Water - Industrial Program Section  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367  
Phone 785/296-5553; FAX: 785/296-5509

**V. Variance**

If the applicant believes the conditions of this certification will result in impairment of important widespread social and economic development, the applicant is advised of the variance provisions of KAR 28-16-28b(III) and KAR 28-16-28f(e).

**VI. Additional Information**

The KDHE website contains the following information to assist the applicant in preparing a project water quality protection plan:

\*Construction practices: <http://www.dnr.mo.gov/env/wpp/wpcp-guide.htm>

\*Project Water Quality Protection Plan Form and Instructions:

<http://www.kdheks.gov/nps/resources/nwpwqppfm.doc> or

<http://www.kdheks.gov/nps/resources/nwpwqppfm.pdf>

\*Kansas Surface Water Register:

[http://www.kdheks.gov/befs/download/Current\\_Kansas\\_Water\\_Register.pdf](http://www.kdheks.gov/befs/download/Current_Kansas_Water_Register.pdf)

\*Kansas Surface Water Maps:

[http://www.kdheks.gov/befs/download/2006\\_Surface\\_Water\\_Register\\_Maps.pdf](http://www.kdheks.gov/befs/download/2006_Surface_Water_Register_Maps.pdf)

Surface Water Quality Standards- [http://www.kdheks.gov/water/28\\_16\\_28b\\_g.pdf](http://www.kdheks.gov/water/28_16_28b_g.pdf)

\*KDHE District Offices- <http://www.kdheks.gov/directions/index.html>

The Kansas Department of Health and Environment, Bureau of Water-Watershed Management Section at: 785/296-4195 or FAX 785/296-5509. This information can also be obtained by written communication directed to:

Kansas Department of Health and Environment  
Bureau of Water - Watershed Management Section  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367 or email: [nps@kdhe.state.ks.us](mailto:nps@kdhe.state.ks.us)